

### **REMARKS**

Claims 39-41, 44-56, and 88-89 and 93-116 are pending in the application. Of these, the Office Action of May 16, 2003 identifies claims 56, 88-89 and 112-116 as allowed; claims 44-46, 54, 95-97, and 108 as allowable if rewritten in independent form; and claims 39-41, 47-53, 55, 93-94, 98-107, and 109-111 as rejected under 35 U.S.C. §102.

Applicant reserves all applicable rights not asserted in or with this response, including, for example, the right to rebut tacit and explicit characterizations of one or more cited references, the right to rebut asserted combinations and motives for combinations, and the right to swear behind one or more cited references. Applicant makes no admissions regarding the status of any art of record as prior art.

#### **Response to §102 Rejections**

The Action rejects claims 39-41, 47-53, 55, 93-94, 98-107, and 109-111 under 35 USC § 102(e) as anticipated by Takenaka (U.S. 5,293,510). Specifically, the Action cites Takenaka features 32, 31, and 30 as corresponding respectively to the first, second, and third portions in the rejected claims.

In response, applicant submits respectfully that one of skill would not regard features 32, 31, and 30 as meeting the terms of the rejected claims, since each of the rejected claims requires "an electrode" comprising the first, second, and third portions, and Takenaka features 30-32 actually represent portions of two different electrodes.

More precisely, Takenaka Fig. 1 shows that features 31 and 32 adjoin each other to arguably represent a lower electrode (31/32) and that feature 30 represents an upper electrode. The upper and lower electrodes sandwich ferroelectric film 29 to define capacitor C. Neither the upper nor the lower electrode taken by itself includes first, second, and third portions. Thus, it does not appear that one of skill would read Takenaka Fig. 1 as teaching "an electrode" that meets the requirements of the rejected claims.

In the Action, the Examiner appears to acknowledge that neither of Takenaka's upper or lower electrodes taken alone meets the requirements of the claims. However instead of allowing the claims, the Examiner argues that "the claimed term 'an electrode' also comprises different electrodes made of different materials. Therefore, an electrode of Takenaka would meet the claimed term 'an electrode.'"

To the extent that this argument is understood, applicant submits respectfully that the open-ended language of the rejected claims cover devices that may include more than one electrode, provided that at least one electrode, that is, an electrode, meet the terms of the rejected

claims. Consider, for example, a claim to a vehicle having four wheels. Such a claim would not be anticipated by a reference which separately showed a tricycle and a unicycle, though the reference surely includes two vehicles having four wheels in total. One of skill would understand that the tricycle and the unicycle are separate vehicles, and would not read the reference as expressly teaching a vehicle having four wheels. Similarly, one of skill would not view the upper and lower electrodes in Takenaka as expressly teaching “an electrode” that incorporates the attributes of both the upper and lower electrodes.

Additionally, applicant submits that the Examiner is correct that, from a material standpoint, the rejected claims only require that the first and second portions of the claimed electrode be different materials. However, the grammar of the claim makes it clear that the first and second portions are portions of the recited electrode, not portions of two separate electrodes, such as Takenaka’s upper and lower electrodes. Moreover, there’s no evidence in the record that one of skill would have regarded the structure of Takenaka’s upper and lower electrodes with a dielectric in between as collectively constituting “an electrode.”

Accordingly, applicant requests respectfully that the Examiner reconsider and withdraw the §102 rejections of claims 39-41, 47-53, 55, 93-94, 98-107, and 109-111.

**Conclusion**

In view of the highlighted remarks, applicant respectfully requests reconsideration of the application. Moreover, applicant invites the Examiner to telephone its patent counsel (612-349-9593) to resolve any new issues that may delay allowance

If necessary, please charge any additional fees or credit overpayment to Deposit Account No. 19-0743.

Respectfully submitted,

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By their Representatives,

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Date

18 Aug 2003

By

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CERTIFICATE UNDER 37 CFR 1.8: The undersigned hereby certifies that this correspondence is being deposited with the United States Postal Service with sufficient postage as first class mail, in an envelope addressed to: Commissioner of Patents, P.O.Box 1450, Alexandria, VA 22313-1450, on this 18th day of August, 2003.

Name

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